

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

1980 APR 11 PM 3 27

CLERK
U.S. DISTRICT COURT

BALLY MANUFACTURING CORPORATION,)

Plaintiff,)

v.)

Civil Action No.
78 C 2246

D. GOTTLIEB & CO., WILLIAMS)
ELECTRONICS, INC. and ROCKWELL)
INTERNATIONAL CORPORATION)

Defendants.)

and

BALLY MANUFACTURING CORPORATION,)

Plaintiff,)

v.)

Civil Action No.
79 C 713

GAME PLAN INCORPORATED,)

Defendant.)

DOCKETED
APR 17 1980

PLAINTIFF'S RESPONSES TO THE
SECOND SET OF INTERROGATORIES OF
DEFENDANTS ROCKWELL AND GOTTLIEB

General Response and Objections:

Bally Manufacturing Corporation (Bally) generally objects to SECOND SET OF INTERROGATORIES OF DEFENDANTS ROCKWELL AND GOTTLIEB as not being in compliance with Local Rule 9(g) because although the interrogatories are listed in six sections, Bally asserts there are well over 20 proper interrogatories. Bally will provide the following responses in

order to expedite discovery, even though Bally does not believe it is under any obligation to answer these interrogatories because they are clearly a violation of Local Rule 9(g).

INTERROGATORY NO. 2(d)

Please supplement and fully respond to defendant Gottlieb's Interrogatories No. 2(a)-2(c).

INTERROGATORY NO. 2(a). With respect to the subject matter claimed in the '232 Patent to be the invention of applicants

(a) What is the earliest provable date of the conception by the applicants of that subject matter? and

(a1) Identify all specific documents (among those to be produced by BALLY in response to WILLIAMS' First Request for Documents served October 5, 1978) which tend to support, confirm or prove the conception date set out in answer to part (a) of this interrogatory;

(a2) Identify all witnesses who can testify in support of the proof of the conception date set out in the answer to part (a) of this interrogatory, and state the substance of the testimony which each such witness can give in that regard.

Response:

Plaintiff objects to this interrogatory on the grounds that these interrogatories require a legal interpretation or opinion with respect to the terms "earliest provable date of ... conception."

INTERROGATORY NO. 2(b). What is the date upon which provable continuous diligence toward actual or constructive reduction to practice was begun by or on behalf of the applicants, and the time interval over which such provable, continuous diligence was exercised? and

(b1) Identify the documents (among those to be produced by BALLY in response to WILLIAMS' First Request for Documents served October 5, 1978) which tend to support, confirm or prove the date and time interval set out in answer to part (b) of this interrogatory; and

(b2) Identify all witnesses who can testify in support of the proof of the date and the time span (set out in the answer to part (b) of this interrogatory), and state the substance of the testimony which each such witness can give.

Response:

Plaintiff objects to these interrogatories on the grounds that they require a legal interpretation or opinion with respect to the terms "provable continuous diligence toward actual or constructive reduction to practice."

INTERROGATORY NO. 2(c). What is the earliest provable date of an actual reduction to practice, by or on behalf of applicants, of that subject matter? and

(c1) Identify all documents (among those to be produced by BALLY in response to WILLIAMS' First Request for Documents served October 5, 1978) which tend to support, confirm or prove (i) the organization and operation of the apparatus so reduced to practice, and (ii) the date upon which such reduction to practice occurred; and

(c2) Identify all witnesses who can testify in support of proof of (i) the organization and operation of the apparatus so reduced to practice and (ii) the date upon which such reduction to practice occurred, and state the substance of the testimony which each such witness can give in that regard; and

(c3) Describe any apparatus now in existence which was the first actual reduction to practice, state its present physical location, and identify the person having custody thereof.

Response:

Plaintiff objects to these interrogatories on the grounds that these interrogatories require a legal interpretation or opinion with respect to the terms "earliest provable date of an actual reduction to practice."

INTERROGATORY NO. 3

With regard to each claim of the '232 patent on which Rockwell or Gottlieb are charged with infringement:

(a) Apply on an element-by-element basis each claim allegedly infringed by any pinball game manufactured by defendant Gottlieb or by any pinball game microprocessor controller manufactured by defendant Rockwell, and specifically, refer each claim element to circuit components of the schematic diagrams found in Gottlieb's Service Manual for Solid State Pinball Games, produced and identified by Gottlieb in this litigation as document G0005. Defendant Gottlieb represents that the schematic diagrams in document G0005 typify its "System I" solid state pinball games. To the extent that Bally contends the "System II" structure, as set forth in Rockwell documents GP02200, is alleged as an infringement, also apply the claims to the Gottlieb "System II" structure.

Response:

Plaintiff objects to these interrogatories as being vague and indefinite. To the extent that Plaintiff understands what is being asked, Plaintiff will only consider answering the interrogatory with respect to documents G0005 and GP02200 if Gottlieb and Rockwell stipulate that the documents are representative of respectively "System I" and "System II" solid-state pinball machines.

(b) Separately state the date of:

(1) conception;

- (2) first drawing;
- (3) first drawing of the "processor" part;
- (4) first drawing of the "display means" part;
- (5) first drawing of the "multiplexing means" part;
- (6) reduction to practice;
- (7) first offer for sale;
- (8) first manufacture;
- (9) first use;
- (10) first sale; and
- (11) first disclosure to persons other than the plaintiff

of the alleged invention claimed therein.

Response:

Bally's position regarding reduction to practice and conception dates are already of record, see, for example, APPLICANT'S RESPONSE TO THE FIRST OFFICE ACTION in the reissue proceedings. Bally objects to the remaining subparts as being vague and indefinite. It is not understood what is meant by first drawing of the "processor", "display means", or "multiplexing means" part. Further it is not understood how the remaining subparts are related to the introductory portions of the interrogatory.

(c) Separately identify by document production number or otherwise all documents which evidence the date of:

- (1) conception;
- (2) first drawing;

- (3) reduction to practice;
- (4) first offer for sale;
- (5) first manufacture;
- (6) first use;
- (7) first sale; and
- (8) first disclosure to persons other than the plaintiff

of the alleged invention claimed therein.

Response:

Bally objects to this interrogatory for the reasons stated in response to Interrogatory 3(b) above. Further, to the extent that this interrogatory is understood pursuant to Rule 33(c) of the Federal Rules of Civil Procedure Bally refers the defendant to documents which have been produced in this litigation, and further to the deposition transcripts of pertinent witnesses deposed in this lawsuit.

(d) Separately identify the person employed by or under the control of plaintiff who is most knowledgeable of the:

- (1) conception;
- (2) first drawing;
- (3) design;
- (4) development;
- (5) construction;
- (6) testing;
- (7) reduction to practice;
- (8) first offer for sale;

- (9) first manufacture;
 - (10) first use;
 - (11) first sale; and
 - (12) first delivery to a customer
- of the alleged invention claimed therein.

Response:

See Response to Interrogatory 3(b). The person most knowledgeable of the conception and reduction to practice is believed to be Jeffrey Frederiksen.

(e) Separately state whether plaintiff ever made, used, sold, or offered to sell -- prior to its acquisition of the '232 Application -- any device embodying the alleged invention claimed therein; and if the answer is in the affirmative:

- (1) Identify each device;
- (2) State the earliest date plaintiff (a) made and (b) sold each device identified in subpart 1 hereof.
- (3) Locate and identify all reasonably available documents relating to each such making and selling referred to in subpart 2 hereof.
- (4) Identify the persons employed by or under the control of plaintiff who plaintiff believes to be most knowledgeable of each such making and selling referred to in subpart 2 hereof and indicate plaintiff's belief as to the present whereabouts of such persons.

Response:

Plaintiff objects to this interrogatory as being vague and indefinite as to what is meant by "prior to its acquisition of the '232 Application", and what is meant by "made, used, sold or offered to sell".

(f) Identify the person or persons who plaintiff believes to be most knowledgeable of the:

- (1) conception;
- (2) first drawing;
- (3) design;
- (4) development;
- (5) construction;
- (6) testing;
- (7) reduction to practice;
- (8) first offer for sale;
- (9) first manufacture;
- (10) first use; and
- (11) first sale

of each device identified in response to subpart (e) hereof.

Response:

See the Response to Interrogatory 3(b). Further, this interrogatory is objected to as being vague and indefinite because it is not understood how these subparts relate to the introductory portions of the interrogatory.

(g) If plaintiff contends that either of the named co-inventors of the '232 patent contributed prior to 1978 to the design of the claimed subject matter allegedly embodied in each device identified in subpart (e) hereof, please briefly identify such contribution.

Response:

See the Response to Interrogatory 3(e)

(h) Identify by document production number or otherwise each document produced in this litigation which

evidences such contribution identified in subparagraph (g) hereof.

Response:

See the Response to Interrogatory 3(e).

(i) Please identify each person or company who plaintiff has accused of infringing such claim and state the date of such accusation.

Response:

Plaintiff objects to this interrogatory as being irrelevant to the present lawsuit and not likely to lead to admissible evidence. However, in an attempt to expedite discovery, Plaintiff gives the following response:

D. Gottlieb and Rockwell were accused on June 6, 1978, when this lawsuit was first filed;

Atari was accused in a letter dated November 28, 1978, from A. Sidney Katz to Atari, Inc.;

Astro Games, Inc. was accused in a letter dated November 24, 1978, from A. Sidney Katz to Astro Games, Inc.;

Game Plan Incorporated was accused in a letter dated November 28, 1978, from A. Sidney Katz to Game Plan Incorporated; and

Brunswick Corporation was accused in a letter dated November 28, 1978, from A. Sidney Katz to Brunswick Corporation.

(j) For each person or company identified in subpart (i) hereof, please identify each communication to such person or company conveying such accusation.

Response:

See Response to Interrogatory 3(i).

(k) Identify each license and each license under such claim, including specifically any licenses to Midway Mfg. Co. and Motorola, Inc.

Response:

See produced documents.

INTERROGATORY NO. 4

With respect to each claim of the '232 patent:

(a) To the extent that plaintiff contends that the claimed subject matter has achieved a high degree of commercial success as an indicia of patent validity:

(1) Identify all documents reasonably available to plaintiff which plaintiff believes evidences such contention;

(2) Identify the person having the most first hand knowledge of such commercial success; and

(3) Indicate on a quarter of a year-by-quarter of a year basis the magnitude of such commercial success relative to electrical mechanical pinball games.

Response:

Bally objects to this interrogatory as being vague and indefinite as to what is meant by "high degree of commercial success". Bally objects to subpart (2) of this interrogatory in that it has not been determined who has the most knowledge regarding this subject matter, and to determine who that person is would be unduly burdensome. For annual figures of sales of Bally pinball machines the defendants are referred to the publically available 10(K) reports of Bally.

(b) To the extent that plaintiff contends that the claimed subject matter achieved fulfillment of a long-felt but unsatisfied need:

(1) Identify all documents reasonably available to plaintiff which plaintiff believes evidences such contention;

(2) Identify the person having the most first hand knowledge of such alleged long-felt but unsatisfied need; and

(3) Describe the magnitude on a year-by-year basis of such long-felt but unsatisfied need.

Response:

No answer required. However, discovery continues and Bally expressly reserves the right to make such a contention .

(c) To the extent that plaintiff contends that the claimed subject matter has achieved success where others have tried and failed: .

(1) Identify all documents reasonably available to plaintiff which plaintiff believes evidences such contention;

(2) Identify the person who plaintiff believes has the most first hand knowledge of such trials and failures of others; and

(3) Identify by date and manufacture each such trial and failure.

Response:

See the deposition transcripts of Atari employees and documents produced by Atari in these proceedings relating to the feasibility studies done relating to the El Toro, Delta Queen, and Super-Flite pinball machines. Also, see the

deposition transcripts of Ramtek employees and documents produced by Ramtek in these proceedings relating to the Lucky Dice pinball machine. See the deposition transcript of Mike Stroll relating to his evaluation of National Semiconductor, Rockwell International Corporation and Seeburg Corporation prototypes built for Williams Electronics. Also, see the deposition transcripts of National Semiconductor and documents produced by National in these proceedings relating to the OXO game. Also, see the deposition transcripts of Williams and Gottlieb employees relating to early efforts to design a solid-state pinball machine. However, discovery continues and Bally expressly reserves the right to add to this list at some future time.

INTERROGATORY NO. 5

With respect to plaintiff's statements to the United States Patent and Trademark Office in connection with the reissue application:

(a) In Applicant's Supplemental Reply To Protest on page 5 applicant states: "That is, while the applicants' original attorneys sought to emphasize the multiplexing nature of the system in contrast to the prior art references by referring to the frequency of operation (the expression of which was considered to constitute "new matter"), the Examiner recognized that the subject matter of the broader aspect was patentable even without the "new matter" (i.e., multiplexing) distinctions." Please indicate where applicant contends the Examiner ever indicated that the "subject matter of the broader aspect was patentable even without the "(multiplexing) distinction".

Response:

For the answer to this interrogatory see pages 4 through 6 of Applicant's Supplemental Reply To Protest.

(b) In Applicants' Supplemental Reply To Protest, page 6 (last paragraph) and page 7, applicant refers to "unique problems" for games involving a moving mass not otherwise present in typical microprocessor applications. Please identify in the '232 patent where plaintiff contends, if it does so contend, such "unique problems" are:

- (1) Identified, and
- (2) Overcome by the patented system.

Response:

These "unique problems" are identified throughout the patent, see, for example, column 3, line 62, through column 4, line 4. Plaintiff objects to subpart (2) of this interrogatory as being vague and indefinite in that it does not make any sense.

(c) With respect to Applicants' Supplemental Reply To Protest, page 7, first full paragraph, please identify where in the '232 patent plaintiff contends the alleged "unique problems" of:

- (1) Fast and variable switch bounce;
- (2) High driving currents for lamps and solenoids;
- (3) Switching transients; and
- (4) The requirement to maintain the proper feel of the game for the player

are identified and overcome.

Response:

Plaintiff objects to this interrogatory as being vague and indefinite as to the meaning of "identified and overcome" with relationship to the rest of the interrogatory.

(d) With respect to Applicants' Supplemental Reply To Protest, page 7, third full paragraph, please identify the "solid state pinball games which did not use the cyclical multiplexing system" and manufacturer thereof.

Response:

An example of a pinball machine was a DYN-O-MITE pinball machine manufactured by Allied Leisure. See Gottlieb documents G1236-1268.

(e) With respect to Applicants' Reply To Protest, page 2, paragraph 2, please identify

(1) Applicants' attorneys who first became aware of the fact that the Bally Alley was a microprocessor-controlled game;

(2) The date when the attorneys became aware; and

(3) Who informed such attorneys that the Bally Alley was a microprocessor-controlled game.

Response:

Plaintiff objects to this interrogatory as being vague and indefinite. However, to the extent that it is understood, it is believed that A. Sidney Katz was Applicants' attorney who first became aware that the Bally Alley was a microprocessor-controlled game. Presently, the exact date he became aware of this is not known. Plaintiff further objects to the third

subsection of this interrogatory as being vague and indefinite because it is not limited in time.

(f) In applicants' Reply To Protest, page 3, it is stated that both Mr. Katz and the Examiner believed they "understood the operation of the Bally game." Please describe such understanding to the extent of whether the Bally Alley game:

(1) Employed multiplexing (according to the meaning of that term in the '232 patent) for inputting switch information to the microprocessor controller;

(2) Employed multiplexing (as that term is used in the '232 patent) for outputting electrical signals which were used for operating output devices such as lamps and digit display;

(3) Employed a matrix of lamps which were energized using a multiplexing technique which sequentially energized rows of the matrix to give the appearance of a light spot (emulating a bowling ball) moving down the matrix to thereby emulate a bowling ball rolling down the alley.

(4) Employed a plurality of switches arranged in rows and employed multiplexing techniques for reading switch status information into the microprocessor on a row-by-row basis.

(5) Whether the Bally Alley contained "a multiplexing system [is] used directly for controlling the displays, switches and/or lamps" as set forth in the first paragraph of page 4 of applicants' Reply To Protest.

Response:

Plaintiff objects to this interrogatory as mischaracterizing the statement made in the Reply To Protest, therefore no answer to this interrogatory can be given.

INTERROGATORY NO. 6

In patent application Serial No. 633,470, filed in the United States Patent and Trademark Office on November 19, 1975,

identified previously as document WDX-31, with regard to claim 1 and claim 13 of document WDX-31:

(a) Separately state the date of:

- (1) conception;
- (2) first drawing;
- (3) first drawing of the "computer means" part;
- (4) first drawing of the "scoring display means" part;
- (5) reduction to practice;
- (6) first offer for sale;
- (7) first manufacture;
- (8) first use;
- (9) first sale; and
- (10) first disclosure to persons other than the plaintiff

of the alleged invention claimed therein.

(b) Separately identify by document production number or otherwise all documents which evidence the date of:

- (1) conception;
- (2) first drawing;
- (3) reduction to practice;
- (4) first offer for sale;
- (5) first manufacture;
- (6) first use;
- (7) first sale; and
- (8) first disclosure to persons other than the plaintiff

of the alleged invention claimed therein.

(c) Separately identify the person employed by or under the control of plaintiff who is most knowledgeable of the:

- (1) conception;
- (2) first drawing;
- (3) design;
- (4) development;
- (5) construction;
- (6) testing;
- (7) reduction to practice;
- (8) first offer for sale;
- (9) first manufacture;
- (10) first use;
- (11) first sale; and
- (12) first delivery to a customer

of the alleged invention claimed therein.

(d) Separately state whether plaintiff ever made, used, sold, or offered to sell -- prior to the date of its acquisition of the '232 Application -- any device embodying the alleged invention claimed therein; and if the answer is in the affirmative:

- (1) Identify each device;
- (2) State the earliest date plaintiff (a) made and (b) sold each device identified in subpart 1 hereof.
- (3) Locate and identify all reasonably available documents relating to each such making and selling referred to in subpart 2 hereof.

(4) Identify the persons employed by or under the control of plaintiff who plaintiff believes to be most knowledgeable of each such making and selling referred to in subpart 2 hereof and indicate plaintiff's belief as to the present whereabouts of such persons.

(e) Identify the person or persons who plaintiff believes to be most knowledgeable of the:

- (1) conception;
- (2) first drawing;
- (3) design;
- (4) development;
- (5) construction;
- (6) testing;
- (7) reduction to practice;
- (8) first offer for sale;
- (9) first manufacture;
- (10) first use; and
- (11) first sale.

of each device identified in response to subpart (d) hereof.

(f) If either of the named co-inventors of the '232 patent contributed prior to 1978 to the design of the claimed subject matter allegedly embodied in each device identified in subpart (d) hereof, please briefly identify such contribution.

(g) Identify by document production number or otherwise each document produced in this litigation which evidences such contribution identified in subparagraph (f) hereof.

Response:

Discovery has been stayed in this lawsuit with respect to patent application Serial No. 633,470 until April 15, 1980.

INTERROGATORY NO. 7

With regard to each claim of the '232 patent on which Rockwell or Gottlieb are charged with infringement, apply on an element-by-element basis each claim allegedly infringed by any pinball game allegedly manufactured by Brunswick Corporation, or by any pinball game microprocessor controller manufactured by defendant Rockwell, and specifically, refer each claim element to circuit components of the schematic diagrams of documents R5597, R5526 and R4886.

Response:

Plaintiff objects to this interrogatory as being premature because discovery relating thereto has not been completed. Further, defendant must stipulate as to the representative nature of the specified documents corresponding to the particular commercial devices of Rockwell, Gottlieb and Brunswick which are the bases for plaintiff's charges of infringement before plaintiff can answer this interrogatory.